

HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT,)	
)	No. 12-cv-05112-BHS
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
TRUCK FORCE LLC,)	
)	
Defendant.)	
_____)	

WHEREAS, Plaintiff Waste Action Project filed a Complaint against Defendant Truck Force LLC on February 9, 2012 alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facility located in Vancouver, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies any fault, wrongdoing, or liability for all claims and alleged violations;

WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in
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1 the best interest of the parties and the public, and that entry of this Consent Decree
2 without additional litigation is the most appropriate means of resolving this action; and

3 WHEREAS, Plaintiff and Defendant, without trial, adjudication, or admission of
4 any issues of fact or law with respect to Plaintiff's claims or allegations and without
5 admission of any fact, allegation, or legal argument contained in Plaintiff's sixty (60) day
6 notice or complaint in this action, consent to the entry of this Consent Decree.
7

8 NOW THEREFORE, upon consent of the parties and upon consideration of the
9 mutual promises herein contained, it is hereby
10

11
12 ORDERED, ADJUDGED AND DECREED as follows:
13

14 1. This Court has jurisdiction over the parties and subject matter of this
15 action;
16

17 2. The undersigned representative for each party certifies that he or she is
18 fully authorized by the party or parties whom he or she represents to enter into the terms
19 and conditions of this Consent Decree and to legally bind the party or parties and their
20 successors in interest to it.
21

22 3. This Consent Decree shall apply to, and be binding upon, the parties, and
23 upon the successors and assigns of the parties.

24 4. This Consent Decree shall apply to Defendant's operation and/or oversight
25 of its facility located at or about 9226 NE Highway 99, Vancouver, Washington 98665
26 (the "facility").
27

28 5. This Consent Decree constitutes the exclusive remedy and a full and
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1 complete settlement of the claims alleged in the Complaint in this case and all other
2 claims known and unknown existing as of the date of entry of this Consent Decree, that
3 could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from
4 operations of the facility identified in paragraph 4 of this Consent Decree, which claims
5 are released and dismissed with prejudice. Enforcement of this Decree shall be the
6 exclusive remedy of the plaintiff for any violation of its terms.
7

8 6. This Consent Decree is a settlement of disputed facts and law and shall not
9 constitute evidence in any proceeding, an admission or adjudication with respect to any
10 allegation of the Complaint, any fact or conclusion of law with respect to any matter
11 alleged in or arising out of the Complaint, or admissions or evidence of any wrongdoing
12 or misconduct on the part of the Defendant or its successor.
13

14 7. In full and complete satisfaction of the claims covered by the Complaint
15 filed in this case and all other claims covered by this Consent Decree, as described in
16 Paragraph 5, Defendant agrees to abide by and be subject to the following terms and
17 conditions for a period of two (2) years from the date of entry of this Decree:
18

19 a. Defendant will comply fully with all conditions of its National
20 Pollutant Discharge Elimination System Permit No. WAR-012216 (the "NPDES permit")
21 and any successor, modified, or replacement permit;
22

23 b. In the event Defendant triggers Level 2 corrective actions under its
24 NPDES permit, it will take one of two responses at the earliest practicable time and not
25 later than August 1 of the following year. After triggering Level 2 corrective actions,
26 Defendant will either 1) pave the areas of heavy truck traffic at Defendant's facility with
27 Portland cement concrete pavement, pave the remaining portions of the facility with a
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1 surface of Defendant's choosing that will accommodate effective vacuum sweeping, and
 2 conduct vacuum sweeping of the entire facility on a quarterly basis, or 2) Isolate all
 3 storm-drains at the facility from vehicle traffic with traffic cones, bright rope, or some
 4 other clearly demarcated boundary to prevent vehicles from driving over the storm-
 5 drains, and install filter socks and/or straw bales around each storm-drain;

6
 7 c. Defendant will, for a period of two years beginning on the date that
 8 this Consent Decree is entered by the Court, forward copies to Plaintiff of all written or
 9 electronic communications between Defendant and the Washington Department of
 10 Ecology concerning Defendant's compliance with the NPDES permit and the Clean
 11 Water Act, including but not limited to Discharge Monitoring Reports. These copies will
 12 be forwarded to Plaintiff on a quarterly basis and not later than the twentieth day
 13 following the due date for submission of Discharge Monitoring Reports to the
 14 Department of Ecology as set forth in the NPDES permit.
 15

16
 17 8. Not later than sixty days after the date of entry of this Decree, Defendant
 18 will make a payment of \$5,000.00 (FIVE THOUSAND DOLLARS) to the Lower
 19 Columbia Fish Enhancement Group for the Salmon Creek project that is described in
 20 Attachment A to this Decree. Such payments shall be made by check payable and mailed
 21 to the Lower Columbia Fish Enhancement Group, 12404 SE Evergreen Highway,
 22 Vancouver, WA98683, with copies to Plaintiff.
 23

24 9. Defendant will pay Plaintiff's reasonable attorney and expert fees and
 25 costs in an amount not to exceed \$15,000 (FIFTEEN THOUSAND) by check payable
 26 and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn:
 27 Richard A. Smith, in full and complete satisfaction of any claims Plaintiff may have
 28

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1 under the Clean Water Act for fees and costs. Payment of this amount will be made in
 2 two separate installments. Defendant will pay a first installment of \$7,500 (SEVEN
 3 THOUSAND FIVE HUNDRED) no later than 30 days after the date of entry of this
 4 Decree. Defendant will make the second installment of the balance owed no later than 45
 5 days after the date of entry of this Decree.

6
 7 10. Defendant will comply with all requirements of this Decree within the
 8 time periods specified herein. If any event occurs that is outside of the reasonable control
 9 of Defendant (a "force majeure event" as defined below), which causes a delay in
 10 performing tasks required by this Decree, the delay will not constitute a failure to comply
 11 with the terms of this Decree, provided that Defendant has submitted written notification
 12 to Plaintiff no later than fifteen (15) days after the date that Defendant first concludes that
 13 such event has caused or will cause non-compliance, describing the length or anticipated
 14 length of non-compliance, the precise circumstances causing non-compliance, the
 15 measures taken or to be taken to prevent or minimize non-compliance, and a schedule for
 16 implementation of the measure to be taken.
 17

18
 19 A force majeure event will include, but not be limited to the following, to the
 20 extent they are outside the reasonable control of the Defendant and cannot be overcome
 21 by diligence:
 22

- 23 A. Acts of God, war, insurrection, or civil disturbance;
- 24 B. Earthquakes, landslides, fire, floods;
- 25 C. Actions or inactions of third parties over which Defendant has no
 26 control;
- 27 D. Unusually adverse weather conditions;

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1 E. Restraint by court order or order of public authority;

2 F. Strikes; and

3 G. Any other litigation or arbitration or mediation that causes delay.

4 Provided that Defendant complies with the notice provision of this paragraph, in
5 the event that Defendant fails to comply or anticipates failing to comply with the
6 requirements of this Decree because of a force majeure event, Defendant's failure to
7 comply, as described in the written notice to Plaintiff under this paragraph, is not a
8 violation of this Decree and shall not result in any liability or other sanctions. In such
9 event, the milestone date(s) shall be extended for a reasonable period of time following
10 the force majeure event.
11

12
13 11. The Court will retain jurisdiction over this matter and allow this case to be
14 reopened without filing fee for the purpose of enabling the parties to apply to the Court
15 for any further order that may be necessary to construe, carry out, enforce compliance
16 and/or resolve any dispute regarding the terms or conditions of this Consent Decree until
17 termination of the Consent Decree per paragraph 13. In the event of a dispute regarding
18 implementation of, or compliance with, this Consent Decree, the parties will first attempt
19 to informally resolve the dispute through meetings between the parties by serving written
20 notice of request for resolution to the parties and their counsel of record. If no resolution
21 is reached within thirty (30) days from the date that the notice of dispute is served, the
22 parties may resolve the dispute by filing motions with the Court. The provisions of
23 section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of
24 litigation (including reasonable attorney and expert witness fees) to any prevailing or
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1 substantially prevailing party, shall apply to any proceedings seeking to enforce the terms
2 and conditions of this Consent Decree.

3 12. The parties recognize that no consent judgment can be entered in a Clean
4 Water Act suit in which the United States is not a party prior to 45 days following the
5 receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the
6 Administrator of the U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3). Therefore, upon the
7 signing of this Consent Decree by the parties, Plaintiff shall serve copies of it upon the
8 Administration of the U.S. EPA and the Attorney General.
9

10 13. This Consent Decree shall take effect on the date it is entered by the
11 Court. This Consent Decree shall terminate sixty (60) days following completion of all
12 obligations under it.
13

14 14. The rule of construing ambiguities against the drafting party shall not
15 apply to this Decree.
16

17 15. This Consent Decree may be modified only upon the written consent of
18 the parties and the approval of the Court.

19 16. If for any reason the Court should decline to approve this Consent Decree
20 in the form presented, this Consent Decree and the settlement embodied herein shall be
21 voidable at the sole discretion of either party. The parties agree to continue negotiations
22 in good faith in an attempt to cure any objection raised by the Court to entry of this
23 Consent Decree.
24

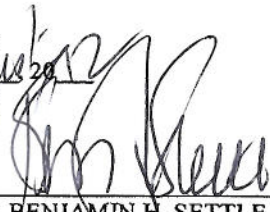
25 17. Notifications or copies required by this Consent Decree to be made to
26 Plaintiff shall be mailed to **Waste Action Project, P.O. Box 4832, Seattle, WA 98194-**
27 **0832**. Notifications required by this Decree to be made to Defendant shall be mailed to
28

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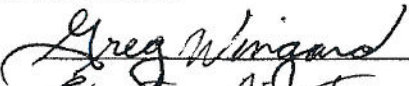
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1 Jim Hayes, Truck Force, LLC, 9226 NE Highway 99, Vancouver, WA 98665.

2
3 Dated and entered this 20 day of August 2012

4
5
6 
7 HON. BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

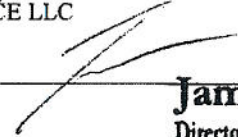
8 WASTE ACTION PROJECT

9 Signature: 

10 Title: Executive Director

11 Dated: June 18th, 2012

12 TRUCK FORCE LLC

13
14 Signature: 

15 **James W Hayes**

16 Title: Director of Safety & Compliance

17 Dated: 6/18/2012

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June 11, 2012

RE: Truck Force Consent Decree

To whom it may concern:

In reference to the Truck Force Consent Decree the Lower Columbia Fish Enhancement Group ("LCFEG") has read and understands the requirements as of June 8, 2012. The Pleasant Valley project may be described as follows:

A total of 1000 native plants will be planted along bank at Pleasant Valley on Salmon Creek.

Please see this letter as evidence that the LCFEG has read and understands the related Consent Decree, dated June 8, 2012. All monies the LCFEG receives from the aforementioned Consent Decree will be spent the project as described above. On completion of the project the LCFEG will report back to the court and Department of Justice affirming that the money was spent in compliance.

Most Sincerely,

Tammy Weisman
Operations Director